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“The Social Context of Religion in the Jurisdictions of Bioethics”

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In this issue, McCarthy, Homan and Rozier (henceforth MHR) (McCarthy et al. 2020) make the case for re-stablishing the relationship between theological and secular bioethics. I find MHR to be quite informative and find little with which to disagree.

As historians of bioethics note, theology was central to the earlier days of American bioethics but is no longer. Before we assess whether the relationship between theological and secular bioethics can be re-established, we need to know why it was dis-established. Theologians lost interest in (or were excluded from, depending on your perspective) core parts of bioethics NOT because of their transcendent assumptions or “God talk.” Theologians and others left because they could not meet the discursive requirements of arguments in a debate whose ultimate consumer had become governmental agencies and other bureaucratic entities (I cover this history extensively in Evans (2012)).

HISTORY OF RELIGION AND AMERICAN BIOETHICS

Modern American bioethics began in the late 1950s or early 1960s as scientists thought they were on the verge of developing human cloning, human genetic engineering, test-tube babies, human/animal chimeras, artificial organs, organ transplantation, mind control and other technologies. At the time, the profession that had jurisdiction over the ethics of these topics, at least in the public mind, was theology. So, given that this was before any government commissions or structure of input between bioethics and policy-making, the audience for any ethical debate was the public, and theologians jumped into the debate with scientists.

Key to understanding this history, and any possible re-establishment, is a generalization about the arguments in bioethics. Some arguments are about which ends, goals or values we should be pursuing. For example, in the early debates about what is now called human gene editing, people debated whether we should be pursuing human health, economic efficiency, species perfection and much else. To foreshadow, theologians in bioethics typically make arguments about ends, and consistent with this tradition, MHR are arguing about ends, such as their advocacy of a new interpretation of autonomy.

Other arguments in bioethics are about whether the proposed means (e.g. a technology like human gene editing) maximize established, taken for granted ends (goals or values). For example, if we presume the Belmont principles as the goals or ends in human subjects research (and we are required to do so by law), much of bioethics is concerned with debating whether the particular means – an experiment – is actually maximizing the four principles. In this type of bioethics, the principles (ends) are not debated.

In the first few years, until the very early 1970s, the theologians used explicit theological language to argue about ends. Then, in Jonsen's summary, "early religious bioethicists dispensed with their outward religious appearance in order to make themselves welcome and comprehensible to the secular world" (Jonsen 2006, 34). The theologians then had a debate, expressed in secular language, about questions like "what is a human" and "what is the purpose of medicine." Indeed, to keep myself connected to the purpose of this essay, MHR continue this today with the classic theological concern of how we define a human.

The debate about ends was not to last. While the public appreciated a debate about ends, the bioethics debate got the attention of the bureaucratic state, and soon there were government commissions and bioethical input into ethics policy at places like NIH, bureaucratic committees

at research universities across the country and eventually hospitals. In these contexts, the consumers of bioethics, like the members of an IRB, do not want to debate ends like what a human is. They want generalizable, established and calculable ethical rules. Moreover, for policies that must be applied to all members of a society, these ends are best if they are portrayed as universally held by the public and not the opinion of some academics. Principlism is the perfect system for these contexts because the principles are institutionalized, undebated ends that have a calculable quality and are described as derived from the "common morality." A new profession of "bioethicist" – distinct from philosopher, theologian, and lawyer -- arose that used these established and universal ends.

"Bioethics" split into four jurisdictions, some of which MHR mention but do not distinguish. The first three are portrayed as representing the public's values or ends. The first is "research bioethics," which is proposing ethical constraints on the behavior of scientists doing research on humans. This is what the Belmont ends were created for, and now those ends are so unquestionable they have the force of law. This part of bioethics determines if experiments maximize the Belmont ends. The second is "health care ethics consultation," mostly occurring in hospitals, which is also largely based on principlism but with an emphasis on autonomy. To finally get to my point: theologians are typically not involved with these jurisdictions, and the reason is that debating ends is not welcome.

Theologian James Gustafson saw this narrowing of debates coming, writing in the late 1970s that many religious ethicists were beginning to ask thin questions about problems that had been defined by scientists that did not require a discussion of ends, but assumed an end. One example for him was: "should one cut the power source to a respirator for Patient Y whose circumstances are a, b and c [which] is not utterly dissimilar to asking whether $8.20 an hour or $8.55 an hour

ought to be paid to carpenter's helpers in Kansas City" (Gustafson 1978, 387). There is then no point in re-establishing a relationship in these first two jurisdictions as the social structure of these institutions works against debates about ends. This is easiest to see in research bioethics, where if MHR were on the IRB they would want to debate what the four principles should be – which they should, as scholars using theology -- while the social forces on the IRB would be to only decide whether the proposed experiment is consistent with the already established ends. Not following the Belmont ends might result in your institution having its federal research funding cut off – which is the ultimate social force on a university.

The third jurisdiction is "public policy bioethics," which is proposing ethical courses of action for scientists and physicians that can be incorporated into general policies that will be applied to all citizens. This is not only found in the government commission, but also in all of more local regulatory bioethics commissions that have been created over the years, concerning any policy that will be applied to the general public, be it in a university, a legislature or a hospital. It is also not only the work of these entities, but more academic work where the ultimate goal is to influence policy. A debate about ends itself suggests that the ends used in policy are not universally held, and thus an ethical policy is democratically questionable on the sort of Rawlsian grounds that concern many in bioethics. Again, those who create policies do not want abstract debates about ends to pursue, but rather want a debate about whether some technology, like human gene editing, is consistent with taken for granted ends. In this jurisdiction principlism is also influential because its ends are portrayed as universally held by the public. We do see some theologians in this jurisdiction because the discursive requirements are much less codified than in the first two, and some theologians in this area are basically representing the

ends of their segment of the population. But, as the topics get closer to explicit policy-making there are fewer theologians because of the need for established and purportedly universal ends.

The fourth jurisdiction is "cultural bioethics," which does not follow the values or ends of the citizens, or institutionalized ends at all, but rather concerns convincing citizens of the proper values or ends we should be pursuing with a technology-independent of policy concerns. In political theory terms, this is arguing the issue of the day over the fence post or at the pub, something every liberal democratic society must encourage to create the public opinion that the state ostensibly follows. Critically, this debate helps create the ends that bioethical debate in theory follows in the first three jurisdictions. Most purely academic bioethics is in this jurisdiction, and the boundary between the third and fourth jurisdiction is admittedly fuzzy.

RE-ESTABLISHING THE RELATIONSHIP IN SELECTED JURISDICTIONS

To finally get to the proposal of MHR: Re-establishing the relationship requires more than showing the quality of theological ideas, or that ideas could be useful to your interlocutor. Re-establishing needs to be socially possible given the social structure of bioethical debate. Theologians, quite rightly, are concerned with ends, and MHR is all about debating ends, and is thus consistent with theological bioethics of the past 60 years. For example, they want to debate what "autonomy" means, and want a thicker interpretation of that concept.

Therefore, theologians will have little success with the first three jurisdictions that use assumed ends. While there may be more or less policing of boundaries in each case, these jurisdictions do not want to debate the ends that we should pursue through biomedical technology. For example, an individual IRB cannot legally create its own meaning of autonomy. Again, this is not because

of the ultimate transcendent referent of theological ideas – anyone wanting to debate secularly expressed ends will ultimately not find it worth their time.

However, theology is perfect for cultural bioethics. The goal in this jurisdiction is to convince the public of your view, including, critically, the goals or ends that should be pursued through medicine, such as what a true autonomous self really is. If the general public who follows these matters can be convinced that a different type of autonomy is required – one reflecting Ramsey's idea of covenant for example – then ostensibly the other jurisdictions that are based on the public's values would change. Note that I also include in cultural bioethics the theorists of the other jurisdictions who determine things like what the meaning of autonomy really is for the public. It is my position that the first three jurisdictions should be based on the values of the public, but unfortunately no one has ever determined whether the four established principles are actually what the public would pursue with technologies. Theology is one of the sources of non-instrumental and non-individualistic values in contemporary capitalist societies, and how a large percentage of the public thinks, so theological input is very important.

This history allows us to contextualize the concerns expressed in MHR and the commentaries. Many of the commentaries are concerned about the imposition of non-pluralistic views on others, often invoking Rawls' depiction of the public sphere (Li 2020). As Smith (2020) points out, this is a problem in a jurisdiction based on the public's ends. Therefore, when MHR imply that we should re-interpret the ends we use in the first three jurisdictions by bringing in theological interpretations of these concepts, an additional nuance is required. The Rawlsians are right that a theological version of autonomy should NOT be used in the first three jurisdictions unless such an end is shared by the majority of the population. (Given that there are no truly universally held values, where to draw a majoritarian line is a separate question.) BUT, the theological discourse

can be used to better understand what the ends of the public really are. Ultimately, setting ends in the first three jurisdictions should be empirical, but I think given the nature of the field we will be left with scholarly reflection instead. Reflecting on the Christian anthropology may result in a more accurate understanding of the public's view of autonomy than the libertarian version that is assumed to be held by the public.

MHR and many of the authors of the commentaries (Colgrove 2020; Davis 2020; Eberl 2020; Li 2020; Murphy 2020; Roldan-Gomez 2020; Smith 2020) are also concerned with exactly how this relationship between theological and secular bioethics would function. I lack the space to discuss all of their points, but my division of the field does suggest one cut through the thicket.

One distinction is between two ways that theologians could express their ends or values in bioethics (Evans 2012: 8-9). The first is a "condensed translation" that takes a very elaborated, detailed end and creates a simplified, less precise and more general end that, among other things, abandons theological language. If we think of these as pegs in square holes, these are unbiased – they still accurately portray the core of the value or end being pursued, fitting right in the middle of the square. There is, of course, theological remainder (Eberl 2020). The second is "transmutation," which takes a non-central piece of the original end or value that fits with an established value and declares the values to be congruent. This I describe as "biased." Metaphorically, the peg is on one corner of the square hole. For example, in the early 1980s a government commission argued that a theological concern about "playing God" was "really" about the end of non-maleficence (safety). (Evans 2002, Ch. 4) That is a transmutation. One of the reasons theologians should not even pursue the first three jurisdictions is that they will ultimately have to engage in transmutation, not condensed translation, which would not just simplify but change their theology.

With cultural bioethics, the goal is to dialogically create ends. Theologians should start with a condensed translation so that they are broadly understood. Of course, when talking to their own religious community, they should not translate, but in intercultural communication detail must be sacrificed. Of course, a true dialog will be two way, as commentators point out (Kalbian et al. 2020; Matisonn 2020; Murphy 2020). If a goal truly represents the public it will not in our pluralistic society be a direct translation of a religious or secular value but some sort of built compromise. There is a large debate over how to describe the process of discernment, but I like Habermas and Calhoun's concept of "mutual interrogation" or a "complementary learning process" (Calhoun 2011, 85). This has similarities with the Halakhic argumentation described by Davis (2020) and the "moral acquaintances" described by Smith (2020).

In sum, I think the proposal should be to re-establish the relationship between theological and secular bioethics in the jurisdiction of cultural bioethics. If history is any guide, theologians would not even like participating in the other jurisdictions, and it is participation in the other jurisdictions that raise the loudest alarm bells. Theologians should be a part of cultural bioethics, on equal footing with various secular ideologies, to ultimately convince the public to adopt particular ends that we as a society should pursue through medical and scientific activity.

WORKS CITED

Calhoun, C. 2011. Secularism, citizenship and the public sphere. In *Rethinking secularisim*, ed. C. Calhoun, M. Juergensmeyer, and J. VanAntwerpen, 75–91. New York: Oxford University Press.

Colgrove, Nicholas. 2020. "The devil in the details"

Davis, Deenan. 2020. Pluralism in the Jewish Ethical Tradition."

Eberl, Jason T. 2020. "Purely faith-based vs. rationally-informed theological bioethics."

Evans, J. H. 2002. *Playing God? human genetic engineering and the rationalization of public bioethical debate*. Morality and Society Series. Chicago: University of Chicago Press.

Evans, J. H. 2012. *The history and future of bioethics: a sociological view*. New York: Oxford University Press.

Gomez, Isabel Roldan. 2020. "What's missing in secular bioethics? The false dichotomy between 'the secular' and 'the theological'".

Gustafson, J. M. 1978. Theology Confronts Technology and the Life Sciences. *Commonweal* 105(12): 386–392.

Jonsen, A. R. 2006. a history of religion and bioethics. In *Handbook of Bioethics and Religion*, 23–36. New York: Oxford University Press.

Kalbian, Aline H; Campbell, Courtney S.; and Childress, James F. 2020. "Community, complicity, and critique: Christian concepts in secular bioethics."

Li, Hon-Lam. 2020. "Public reason as the way for dialogue."

Matisonn, ??????. 2020. "Talking at cross purposes: why we shouldn't re-establish the relationship between theological and secular bioethics."

McCarthy, M., M. Homan, and M. Rozier. 2020. There's No Harm In Talking: Re-establishing the Relationship Between Theological and Secular Bioethics. *American Journal of Bioethics*.

Murphy, Timothy F. 2020. "Theorizing religion in its meanings for bioethics."

Smith, Patrick T. 2020. "'There's no harm in talking' . . . True. . . but it depends on h*ow we talk and what we then do"*